

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JUAN VILLAR-SANCHEZ

Petitioner,

v.

JOSEPH MCDONOUGH

Respondent.

Civil Action No. 04-11811-NMG

**MEMORANDUM OF THE RESPONDENT  
IN SUPPORT OF MOTION TO DISMISS**

The respondent submits this Memorandum in support of his motion to dismiss the above-captioned petition for writ of habeas corpus filed by Juan Villar-Sanchez, the petitioner, for failure to exhaust state remedies as required by 28 U.S.C. § 2254 (b)(1)(A). The petitioner asserts in his Petition that he did not appeal from his conviction on drug trafficking charges. (Petition, p. 2, ¶ 8 ). As such he is precluded from obtaining habeas corpus relief until the state's highest courts have ruled on his claims. The petitioner's appeal is currently pending in the Massachusetts Appeals Court and his premature petition should be dismissed. (See Criminal Docket herein attached.)

**ARGUMENT****THE PETITION SHOULD BE DISMISSED FOR FAILURE TO EXHAUST  
STATE REMEDIES**

It is well established that "a federal court should not consider questions posed in a habeas petition until the 'power of the highest state court in respect to such questions' has been exhausted." *Mele v. Fitchburg District Court*, 850 F.2d 817, 819 (1st Cir. 1988), *quoting United*

*States ex rel. Kennedy v. Tyler*, 269 U. S. 13, 17 (1925). See *Rose v. Lundy*, 455 U. S. 509, 518-519 (1982); *Picard v. Connor*, 404 U. S. 270, 276 (1971); *Dougan v. Ponte*, 727 F.2d 199, 202 (1st Cir. 1984); 28 U.S.C. § 2254(b)(1)(A). The exhaustion principle, in addition to ensuring that state courts have the first opportunity to correct their own constitutional errors made in their proceedings, enables federal courts to accord appropriate respect to the sovereignty of the states and promotes comity by “minimiz[ing] friction between our federal and state systems of justice.” *Rose v. Lundy*, 455 U. S. at 518. See *Duncan v. Henry*, 513 U. S. 364, 365-366 (1995); *Scarpa v. DuBois*, 38 F.3d 1, 6 (1st Cir. 1994), *cert. denied*, 513 U. S. 1129 (1995); *Duckworth v. Serrano*, 454 U. S. 1, 3 (1984); *Mele v. Fitchburg District Court*, 850 F.2d at 819. See also *Ex parte Royall*, 117 U. S. 241, 251 (1886) (state and federal courts are “equally bound to guard and protect rights secured by the Constitution”).

A claim in state court may include an inkling of a federal claim, but not one “likely to alert the court to the claim’s federal nature.” *Nadworny v. Fair*, 872 F.2d 1093, 1098 (1st Cir. 1989), *quoting Daye v. Attorney General of New York*, 696 F.2d 186, 192 (2d Cir. 1982) (*en banc*), *cert. denied*, 464 U. S. 1048 (1984). See *Scarpa v. DuBois*, 38 F.3d at 6. It is not enough that all the facts necessary to support the federal claim were before the state court, or that a somewhat similar state-law claim was made. *Anderson v. Harless*, 459 U. S. 4, 6 (1982); *Picard v. Connor*, 404 U. S. at 276-277. See *Duncan v. Henry*, 513 U. S. at 366. Rather, “the exhaustion requirement requires a habeas applicant to do more than scatter some makeshift needles in the haystack of the state court record. The ground relied upon must be presented face-up and squarely; the federal question must be plainly defined. Oblique references [that] hint that a [federal] theory may be lurking in the woodwork will not turn the exhaustion trick.”

*Martens v. Shannon*, 836 F.2d 715, 717 (1st Cir. 1988). In order for it to be said that the petitioner has exhausted his state remedies as to his federal habeas claims, he must have presented the state court with:

specific constitutional language, constitutional citation, appropriate federal precedent, substantive constitutional analogy, argument with no masking state-law character, . . . such as would in all likelihood alert a reasonable jurist to the existence of the federal question.

*Nadworny v. Fair*, 872 F.2d at 1101. It is the petitioner's heavy burden to demonstrate that his now claimed federal errors were fairly presented to the state's highest court. *Nadworny v. Fair*, 872 F.2d. at 1098.

Failure to exhaust state remedies is a fundamental defect fatal to a habeas corpus petition. "[F]ederal habeas oversight is not a freewheeling construct. It is dependent, among other things, upon all of the claims asserted in the petition having been exhausted in the state courts."

*Martens v. Shannon*, 836 F.2d at 717. "It would be unseemly in our dual system of government for a federal district court to upset a state court conviction without an opportunity to state courts to correct a constitutional violation." *Picard v. Connor*, 404 U. S. at 275, *quoting Darr v. Burford*, 339 U. S. 200, 204 (1950).

An "issue cannot be considered as having been fairly presented to the SJC for exhaustion purposes unless the applicant has raised it within the four corners" of the application for leave to obtain further appellate review (ALOFAR). *Mele v. Fitchburg District Court*, 850 F.2d at 823. Because petitioner's ALOFAR did not fairly present all the federal claims he now raises, his petition should be dismissed. *Id.* See *Rose v. Lundy*, 455 U. S. at 518-519.

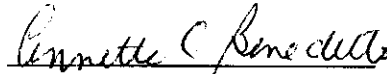
In the petition at bar the petitioner concedes that he has not afforded the state's highest court the opportunity to decide his federal constitutional claims. (Petition, p.2, ¶ 8. His appeal is still pending in the state courts and the record indicates that it was entered in the Massachusetts Appeals Court on September 10, 2004. (See attached Criminal Docket, p.8). The petition is clearly premature with unexhausted claims and should be dismissed.

**CONCLUSION**

For the above-stated reason, the motion to dismiss should be allowed.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

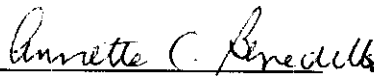


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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the attached documents was served upon the petitioner at the address below by first class mail, postage pre-paid, on September 15, 2004.

Juan Villar-Sanchez, pro se  
Plymouth County Correctional Facility  
26 Long Pond Road  
Plymouth, MA 02360



Annette C. Benedetto  
Assistant Attorney General

**Commonwealth of Massachusetts  
ESSEX SUPERIOR COURT  
Case Summary  
Criminal Docket**

**Commonwealth v Villar-Sanchez, Juan Emilio**

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Details for Docket: ESCR2000-00463

**Case Information**

<b>Docket Number:</b>	ESCR2000-00463	<b>Caption:</b>	Commonwealth v Villar-Sanchez, Juan Emilio
<b>Entry Date:</b>	03/08/2000	<b>Case Status:</b>	CtRm 1 (Salem)
<b>Status Date:</b>	09/13/2004	<b>Session:</b>	Disposed: Entered in Appeals Court
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	
<b>Trial Deadline:</b>		<b>Jury Trial:</b>	NO

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**Parties Involved**

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3 Parties Involved in Docket: ESCR2000-00463

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Villar-Sanchez	<b>First Name:</b>	Juan Emilio
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			
 <b>Party Involved:</b>		 <b>Role:</b>	 Plaintiff
<b>Last Name:</b>	Commonwealth	<b>First Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			
 <b>Party Involved:</b>		 <b>Role:</b>	 Witness
<b>Last Name:</b>	Sabino	<b>First Name:</b>	Herman Reyes

**Address:** Shirley Medium MCI  
**City:** Shirley  
**Zip Code:**  
**Telephone:**

**Address:**  
**State:** MA  
**Zip Ext:**

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## Attorneys Involved

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5 Attorneys Involved for Docket: ESCR2000-00463

**Attorney  
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**Representing:** Villar-Sanchez, Juan Emilio  
(Defendant)

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**Attorney  
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**Tel Ext:**  
**Representing:** Villar-Sanchez, Juan Emilio  
(Defendant)

**Attorney  
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**Firm Name:** FISE01

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<b>Fascimile:</b>	617-988-8495	<b>Representing:</b>	Villar-Sanchez, Juan Emilio (Defendant)

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## Calendar Events

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22 Calendar Events for Docket: ESCR2000-00463

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	11/20/2000	09:00	Hearing: Evidentiary-dismiss	1	Event held as scheduled
2	12/22/2000	09:00	Conference: Status Review	1	Event held as scheduled
3	02/26/2001	09:00	TRIAL: by jury	1	Event not held--scheduled for another date
4	04/05/2001	09:00	TRIAL: by jury	1	Event not held--scheduled for another date
5	05/07/2001	09:00	TRIAL: by jury	1	Event not held--scheduled for another date
6	05/07/2001	09:00	Status: Review by Session	T1	Event held as scheduled
7	05/08/2001	09:00	Hearing: Appt Counsel	1	Event held as scheduled
8	05/30/2001	09:00	Status: Review by Session	1	Event held as scheduled
9	06/21/2001	09:00	Hearing: Evidentiary-affidavit	1	Event not held--scheduled for another date
10	07/26/2001	09:00	Hearing: Compliance	1	Event not held--scheduled for another date
11	08/08/2001	09:00	Hearing: Compliance	1	Event held as scheduled
12	10/01/2001	09:00	Hearing: Evidentiary-suppression	1	Event not held--scheduled for another date

13	11/08/2001	09:00	Hearing: Evidentiary-suppression	1	Event not held--scheduled for another date
14	11/09/2001	09:00	Hearing: Evidentiary-suppression	T1	Event not held--scheduled for another date
15	12/21/2001	09:00	Hearing: Misc Matters	1	Event held as scheduled
16	12/21/2001	09:00	Hearing: Evidentiary-suppression	1	Event not held--joint request
17	02/01/2002	09:00	Hearing: Evidentiary-suppression	1	Event not reached by Court
18	02/14/2002	09:00	Hearing: Motion	1	Event held as scheduled
19	03/08/2002	09:00	Hearing: Evidentiary-suppression	1	Event held--under advisement
20	04/02/2002	09:00	TRIAL: by jury	1	Event continues over multiple day
21	04/03/2002	09:00	TRIAL: by jury	1	Event continues over multiple day
22	04/04/2002	09:00	TRIAL: by jury	1	Trial ends

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## Full Docket Entries

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184 Docket Entries for Docket: ESCR2000-00463

Entry Date:	Paper No:	Docket Entry:
03/08/2000	12	Original case info: ORIGIN=I.
04/25/2000		RE Offense 1:Plea of not guilty
04/25/2000		RE Offense 2:Plea of not guilty
04/25/2000		RE Offense 3:Plea of not guilty
04/25/2000		RE Offense 4:Plea of not guilty
09/16/2000		Stat at cnvrsn to cmputr 09/16/2000.
09/16/2000		(see docket book for previous docket entries).
10/11/2000		Continued until 11/20/2000 for Motion to Dismiss Rup,j>
10/11/2000		Green, Court Stenographer
11/20/2000		Motion hearing held: taken under advisement( Borensrein, J.)
11/20/2000		Continued until December 12, 2000 for status. Borenstein, J/K.
11/20/2000		Gordon, Steno.
12/22/2000		Continued until 02/26/2001 for Trial. Merrick, J., Presiding; A.
12/22/2000		Green, Court Reporter
02/26/2001		Continued until April 05, 2001 for Trial. Whitehead J. Presiding, K.
02/26/2001		Hezekiah, Court Reporter.
04/05/2001		Continued until May 07, 2001for Trial. Borenstein, J. presiding, A.
04/05/2001		Green, Court Reporter.
05/07/2001		Oral Motion to Withdrawal appearance Ronald J Ranta, Esq.: ALLOWED
05/07/2001		Continued until May 08, 2001 in the First Session For Appointment of



05/07/2001		New Counsel. Trial to be Retained by Judge Kottmeyer at Lawrence.
05/08/2001		Committee for Public Counsel Services appointed
05/08/2001		Appearance of Deft's Atty: Lawrence J McGuire
05/08/2001	13	Motion by Deft: For Funds For Interpreter: FILED AFTER HEARING AND
05/08/2001	13	ALLOWED
05/08/2001	14	Motion by Deft: For Funds For Investigator: FILED AFTER HEARING AND
05/08/2001	14	ALLOWED.
05/14/2001	15	Motion by Commonwealth: To Join Related Indictments: FILED
05/14/2001	16	Motion by Deft: In Limine To Exclude Any Reference To Evidence of
05/14/2001	16	Booking Questions: FILED
05/14/2001	17	Motion by Deft: In Limine To Exclude Opinion As To Guilt of
05/14/2001	17	Defendant: FILED
05/14/2001	18	Motion by Deft: In Limine To exclude Any Reference To The Defendant's
05/14/2001	18	Assertion Of Any Rights: FILED
05/14/2001	19	Motion by Deft: In Limine RE: Exclusion of Boric Acid: FILED
05/14/2001	20	Motion by Deft: In Limine To Exclude Evidence of Prior Convictions:
05/14/2001	20	FILED
05/14/2001	21	Motion by Deft: To Propound Questions To Prospective Jurors
05/14/2001	21	Individually: FILED
05/14/2001	22	Motion by Deft: For Relief From Prejudicial Joinder: FILED
05/14/2001	23	Motion by Deft: In Limine To Exclude Any Reference To Any Prior Bad
05/14/2001	23	Acts Of The Defendant: FILED.
05/14/2001	24	Motion by Deft: In Limine For Voir Dire Of Proposed Expert Testimony:
05/14/2001	24	FILED
05/30/2001	25	Motion by Deft: for Funds for Investigator Filed In Court and
05/30/2001	25	ALLOWED. Agnes, J Presiding.
06/21/2001	26	Motion for Discovery Filed
06/21/2001	27	Motion to Suppress Identification Filed
06/21/2001	28	Motion to Suppress Physical Evidence and Memorandum Support Thereof
06/21/2001	28	Filed
12/03/2001	29	Memorandum of Decision & Order On Deft's Motion to Dismiss. DENIED.
12/03/2001	29	Hon. Isaac Borenstein, Justice of the Superior Court, Dated 12/3/2001
12/21/2001		Oral Motion for a Bail Reduction DENIED (Merrick, J>)
02/14/2002		General correspondence regarding: Oral Bail Argument on bail, bail to
02/14/2002		remain the same. (Merrick, J.)
03/08/2002		Hearing on Motion to Suppress taken under advisement. Gants J.
03/08/2002		Presiding, C. Fredericks, Court reporter.
03/08/2002	30	Deft files Memorandum in Support of Motion to Suppress
03/08/2002	30	Identification. FILED
03/08/2002	31	Deft files Affidavit. (In Court).
03/08/2002	32	Commonwealth files Memorandum in Opposition to Deft's Motion To

03/08/2002	32	Suppress. (In Court)
03/11/2002	33	Defendant's motion to Suppress Identification & Fruits of the
03/11/2002	33	Search. DENIED. SEE ORDER, Gants, J
03/13/2002	34	Motion for Habeas Corpus Allowed (Gants, J.)
03/26/2002	35	Certificate of delivery of transcript by Craig A Fredericks, Vol 1 -
03/26/2002	35	Pages 1 - 108, Motion to Suppress, FILED. (Oral Request made in
03/26/2002	35	Court for Transcript). Copies to J. Abruzzese & L. McGuire.
03/28/2002	36	Defendant's motion for Application for Issuance and Service of
03/28/2002	36	Indigent Summons. ALLOWED. Ralph D. Gants, J.
03/28/2002	37	Summons issued
04/02/2002		Case called to Trial On Ind#-0463 & # 0464 ONLY. Jury Impaneled &
04/02/2002		Sworn . Trial Begins
04/02/2002	38	Deft files List of Witnesses and Commonwealth's Potential Witnesses.
04/02/2002	38	FILED in Court
04/02/2002	39	Commonwealth files List of Potential Witnesses. FILED in Court.
04/02/2002	40	Motion by Deft: in Limine to Exclude Characterization of "El Marisco"
04/02/2002	40	Restaurant filed & after hearing. ALLOWED. Agnes J. Presiding.
04/02/2002	41	Motion by Deft: in Limine to Exclude Uncharged Misconduct. FILED &
04/02/2002	41	after hearing, DENIED, Agnes J. Presiding.
04/02/2002	42	Motion by Deft: for a View & After hearing. DENIED. Agnes, J.
04/02/2002	42	Presiding.
04/02/2002	43	Motion by Deft: in Limine Concerning Drug Analysis Filed & ALLOWED as
04/02/2002	43	to "Defendant or Suspect" & DENIED as to Ch 22c, Sect 39. Agnes, J.
04/02/2002	43	Presiding
04/02/2002	44	Motion by Deft: in Limine Concerning Issuance of Search Warrant &
04/02/2002	44	After Hearing, ALLOWED. Agnes, J. Presiding.
04/02/2002	45	Motion by Deft: for Sequestration of Witnesses FILED & ALLOWED. Agnes
04/02/2002	45	J. Presiding.
04/02/2002	46	Motion by Deft: to Be Free of Handcuffs & Shackles. FILED & ALLOWED.
04/02/2002	46	Agnes, J. Presiding.
04/02/2002	47	Motion by Deft: for Voir Dire of Proposed Expert Witness. Allowed in
04/02/2002	47	Part & Denied in Part for Reasons Stated on the Record. Agnes J.
04/02/2002	47	Presiding.
04/02/2002	48	Motion by Deft: to Propound Questions to Prospective Jurors, Allowed
04/02/2002	48	in Part & Denied in Part for Reasons stated on the Record. Agnes J.
04/02/2002	48	Presiding.
04/02/2002	37	Memo of Trial filed
04/03/2002		Jury Trial Continues
04/03/2002	49	Deft files Request for Jury Instructions. Filed in Court.
04/03/2002	50	Commonwealth files Request for Jury Instructions Filed in Court.
04/03/2002	51	Motion by Deft: for Required Finding of Not Guilty at the Close of

04/03/2002	51	the Commonwealth's Case. After Hearing, DENIED. Agnes, J. Presiding
04/04/2002	52	Deft files Supplemental Request for Jury Instructions. Filed in
04/04/2002	52	Court. Agnes J. Presiding.
04/04/2002	53	Motion by Deft: for Required Finding of not Guilty at the Close of
04/04/2002	53	all the Evidence. Filed & After hearing DENIED. Agnes, J. Presiding.
04/04/2002		Trial Ends & Deliberations Begin.
04/04/2002	54	RE: offense # 1: Guilty Verdict (2000-463)
04/04/2002	55	RE: offense # 2: Guilty Verdict (2000-464)
04/04/2002	56	ORDERED remanded to the custody of the Essex Correctional Facility
04/04/2002	56	(Middleton) Until Friday, April 5, 2002, at 9:00 AM in Salem
04/04/2002	56	Superior Court for Sentencing.
04/05/2002		RE Offense 3:Nolle prosequi
04/05/2002		RE Offense 4:Nolle prosequi
04/05/2002	57	Motion by Deft: for Additional Funds for Investigator. Filed & After
04/05/2002	57	Hearing Allowed. Agney, J. Presiding.
04/05/2002	58	Motion by Deft: for Required Finding of Not Guilty or in the
04/05/2002	58	Alternative a New Trial. Filed in Court
04/05/2002	59	Defendant sentenced to 10 (Ten) Years - 10 (Ten) Years - 1 (one) Day
04/05/2002	59	RE; 2000-464: Cedar Junction Committed. Peter Agnes,Justice.
04/05/2002	60	Defendant sentenced to 5 (Five) Years - 5 Years 1 (One) day
04/05/2002	60	Concurrent with 2000-464. Peter Agnes, Justice
04/05/2002	61	Victim-witness fee assessed: \$120.00 and \$150.00 Drug Assessment.
04/05/2002	62	Deft files Notice of Appeal. Filed in Court
04/05/2002	63	Motion by Deft: for Stay of Execution Pending Appeal & After hearing
04/05/2002	63	DENIED. Agnes, J. j
04/05/2002	64	Juror Cards & Questionnaires
04/05/2002	65	Exhibits returned to Law Enforcement Officer, Agency AO A
04/05/2002		Sentence credit given as per 279:33A: 822 days (Eight Hundred Twenty
04/05/2002		Two)
04/05/2002	66	Abstract sent to RMV
04/08/2002	67	Court Reporter Gordon, Kathleen A. is hereby notified to prepare one
04/08/2002	67	copy of the transcript of the evidence of November 20, 2000 Motion to
04/08/2002	67	Dismiss Hearing before Borenstein,J.
04/08/2002	68	Court Reporter Considine, Karen is hereby notified to prepare one
04/08/2002	68	copy of the transcript of the evidence of April 02 - 5, 2002 before
04/08/2002	68	Agnes,J..
04/08/2002	69	Court Reporter Craig Federicks is hereby notified to prepare one copy
04/08/2002	69	of the transcript of the evidence of March 08, 2002.
04/16/2002	70	Notice of appeal from sentence to Concord MCI filed by Juan Emilio
04/16/2002	70	Villar-Sanchez
04/16/2002	71	Letter transmited to the Appellate Division. All parties notified

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## Charges

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4 Charges for Docket: ESCR2000-00463

<b>No.</b>	<b>Charge Description:</b>	<b>Indictment:</b>	<b>Status:</b>
1	Controlled substnc, conspiracy	ESCR2000-00465	Nolle prosequi
2	Traffic in controlled substance, 28-99g	ESCR2000-00463	Guilty verdict
3	Controlled substnc, conspiracy	ESCR2000-00466	Nolle prosequi
4	Traffic in controlled substance, 100-199g	ESCR2000-00464	Guilty verdict

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04/16/2002	71	April 16, 2002
05/06/2002	72	Motion by Deft: to Proceed in Forma Pauperis & Affidavit in Support
05/06/2002	72	of Motion. FILED.
05/06/2002	73	Motion by Deft: to Appoint Appellate Counsel & Affidavit in Support
05/06/2002	73	of Motion. FILED
05/06/2002	74	Deft files Request for Docket Entries. (Copies Mailed 5/6/2002).
05/06/2002	75	Motion by Deft: to Revise and Revoke Sentence & Affidavit in Support
05/06/2002	75	of Motion, FILED
05/06/2002	76	Deft files Formal Request for Official Court Reporters Business
05/06/2002	76	Address.
05/08/2002		Motion (P#72) allowed, notices shall be given to the Committee for
05/08/2002		Public Counsel Services. (Peter Agnes, Justice). Copies mailed May
05/08/2002		10, 2002
06/10/2002	77	Appearance of Deft's Atty: Peter M Onek
06/12/2002	78	Deft files letter RE: Purchase of Trial Transcripts, Copy to Peter M.
06/12/2002	78	Onek.
07/08/2002	79	Drug fee paid as assessed \$150.00
06/23/2003		Transcript of testimony received 1 volume dated 11/20/00 from court
06/23/2003		reporter, Gordon, Kathleen A.
08/05/2003		Transcript of testimony received 2 volumes dated 4/2-3/02 from court
08/05/2003		reporter, Considine, Karen
08/08/2003		Notice of Assignment of Counsel #C8001373-2 pf Charles Stephenson.
08/13/2003	80	Appearance of Deft's Atty: Charles K Stephenson
09/04/2003	81	Motion by Deft: for funds to retain an Interpreter. FILED- Copy to
09/04/2003	81	Bohn, J on 9/15/2003).
09/16/2003	82	Motion #81- ALLOWED (\$600.00(Six Hundred Dollars).Robert H. Bohn,
09/16/2003	82	Justice, Essex Superior Court. (Copy sent to Atty. Stephenson.)
09/18/2003		Transcript of testimony received 2 volumes dated 4/4 & 5/02 from
09/18/2003		court reporter, Considine, Karen
10/03/2003	83	SECOND NOTICE: Court Reporter Craig Fredericks is hereby notified to
10/03/2003	83	prepare one copy of the transcript of the evidence of March 08, 2002.
02/25/2004		Transcript of testimony received 1 volume from court reporter,
02/25/2004		Fredericks, Craig
02/25/2004	84	Delivery of transcript by clerk to Printers.
04/07/2004	85	Certificate of delivery of transcript to District Attorneys Office
04/07/2004	85	and to Charles Stephenson, Esq.
09/08/2004	86	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)
09/08/2004		Notice of completion of assembly of record sent to clerk of Appeals
09/08/2004		Court and attorneys for the Commonwealth and defendant.
09/13/2004	87	Notice of Entry of appeal received from the Appeals Court Dated
09/13/2004	87	9/10/2004.